

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Eric Mahutga,

Complainant,

v.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

Bill Schulz,

Respondent.

On Wednesday, December 5, 2012, this matter came before a panel of three Administrative Law Judges for an evidentiary hearing: Eric L. Lipman (Presiding Judge); James E. LaFave and Cheryl LeClair-Sommer.

Eric Mahutga, the Complainant, appeared on his own behalf and without counsel. William Schulz, the Respondent, appeared on his own behalf and without counsel.

The hearing record closed on Friday, December 7, 2012, following the receipt of post-hearing submissions from the parties.

STATEMENT OF THE ISSUE

1. Did Mr. Schulz post a campaign sign within 100 feet of a polling location that had been designated for the receipt of absentee ballots, during the 46-day period that preceded the November 6, 2012 general election?

The three-judge panel concludes that the terms “anywhere on the public property on which a polling place is situated,” as used in Minn. Stat. § 211B.11, restricts campaigning within 100 feet of the property line of the parcel within which the polling location is situated. Because Mr. Schulz’s vehicle and campaign signs were more than 100 feet from the edge of the parcel that hosted the polling place, he did not violate Minn. Stat. § 211B.11 on October 1, November 1 or November 3, 2012.

Based upon the hearing record, the three-judge panel makes the following:

FINDINGS OF FACT

1. William Schulz is the Mayor of Nowthen, Minnesota.¹

¹ Testimony of William Schulz.

2. Mr. Schulz was a candidate for re-election to the office of Mayor in 2012.²

3. As part of his campaign for re-election, Mayor Schulz placed magnetic campaign signs urging his re-election to the doors of his personal vehicle.³

4. On October 1, November 1 and November 3, 2012, Mayor Schulz undertook city business at the Nowthen City Hall. On these occasions, he parked his vehicle, with the campaign signs attached, in the parking lot adjacent to Nowthen City Hall. The City Hall is located at 19800 Nowthen Boulevard.⁴

5. In 2012, the Nowthen City Hall was not a polling location for the primary or general election nor was it a site that had been designated for the receipt of absentee ballots.⁵

6. During the 46-day period that preceded the November 6, 2012 general election, absentee ballots from voters in Nowthen were received at the City Office Building. The City Office Building is located at 8188 – 199th Avenue, Northwest.⁶

7. The City Office Building, Nowthen Memorial Park, the Nowthen Fire Hall, the Nowthen City Hall and an undeveloped lot owned by the City, are all located on adjoining parcels that lie between Iguana Street, Northwest (on the west), 199th Avenue, Northwest (on the north) and Nowthen Boulevard (on the east).⁷

8. The City Office Building is located approximately 1,500 feet to the north and west of Nowthen City Hall and the adjoining parking lot. The City Office Building sits at the opposite end of this set of government-owned parcels from the City Hall.⁸

Based upon these Findings, the three-judge panel makes the following:

CONCLUSIONS

1. The panel of Administrative Law Judges has jurisdiction in this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.11 prohibits the posting of campaign signs adjacent to polling locations on the day of a primary or general election. The statute states:

² *Id.*; Exhibits 3, 4 and 5.

³ *Id.*

⁴ Testimony of Eric Mathuga; Test. of W. Schulz; Ex. 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

A person may not display campaign material, post signs, ask, solicit, or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a polling place is situated, or anywhere on the public property on which a polling place is situated, on primary or election day to vote for or refrain from voting for a candidate or ballot question.... This section applies to areas established by the county auditor or municipal clerk for absentee voting as provided in chapter 203B.⁹

3. In Minn. Stat. § 211B.11, the terms “anywhere on the public property on which a polling place is situated,” refers to the area within the property lines of the particular parcel on which the polling site is situated. The area where campaigning is prohibited under Minn. Stat. § 211B.11 does not expand if a local unit of government owns parcels that abut the lot on which a polling place is situated.

4. Mr. Schulz did not violate Minn. Stat. § 211B.11 by parking a vehicle adorned with campaign signs more than 100 feet from where absentee balloting was occurring and on a wholly separate parcel from the polling location.

Based upon the Conclusions, and for the reasons explained in the accompanying Memorandum, the panel makes the following:

ORDER

The Complaint is **DISMISSED**.

s/Eric L. Lipman
ERIC L. LIPMAN
Presiding Administrative Law Judge

s/Cheryl LeClair-Sommer
CHERYL LECLAIR-SOMMER
Administrative Law Judge

s/James E. LaFave
JAMES E. LAFAVE
Administrative Law Judge

Dated: December 21, 2012

Reported: Digitally recorded.

⁹ Minn. Stat. § 211B.11, subd. 1.

MEMORANDUM

The facts in this matter are not in dispute.

The Complainant, Mr. Mahutga asserts that because the City Office Building abuts the parcel that hosts the Memorial Park and the Fire Hall, and these parcels are adjacent to the City Hall, and each of these lots is owned by the City of Nowthen, the collection of properties constitutes “the public property on which a polling place is situated” under Minn. Stat. § 211B.11. The panel disagrees.

The plain, ordinary meaning of the terms “the public property on which a polling place is situated” refers to a single parcel. In the City of Nowthen, the site designated for receipt of absentee ballots was situated on a single parcel – not across multiple lots. Further, no polling place was situated on the same lot as the City Hall.

The purpose of the restriction on campaigning in Minn. Stat. § 211B.11 is to permit unfettered entry to, and egress from, a polling site.¹⁰ By parking his truck at a location that could not be observed from the polling site, on a separate and remote parcel, Mayor Schulz did not violate Minn. Stat. § 211B.11.

Even if the plain meaning of the statute did not require dismissal of the Complaint, the Rule of Lenity would. Because Minn. Stat. § 211B.11 is a criminal statute, and regulates political speech, it is to be read narrowly¹¹ and in favor of those in the public square.¹²

A key purpose of the Rule of Lenity is to assure that citizens have clear warning of the conduct the Legislature has prohibited. No one reading Minn. Stat. § 211B.11 would understand it to oblige a search of local title records so as to determine the ownership of nearby parcels, and thus, the area within which campaigning was prohibited. Dismissal of the Complaint is the appropriate result.

E. L. L., J. E. L., C. L-S.

¹⁰ See, generally, *Burson v. Freeman*, 504 U.S. 191, 210 (1992) (upholding a 100-foot restriction on campaigning, a plurality of the U.S. Supreme Court concluded that the “last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible”).

¹¹ *F.E.C. v. Wisconsin Right to Life*, 551 U.S. 449, 457 (2007) (The “First Amendment requires [tribunals] to err on the side of protecting political speech rather than suppressing it;” particularly in the context of campaigns for public office); *State v. Stevenson*, 656 N.W.2d 235, 238 (Minn. 2003) (The rule of lenity states that “[w]hen the statute in question is a criminal statute, courts should resolve ambiguity concerning the ambit of the statute in favor of lenity”).

¹² *State v. Machholz*, 574 N.W.2d 415, 422 (Minn. 1998) (“Commenting on matters of public concern is a classic form of speech that lies at the heart of the First Amendment, and speech in public arenas is at its most protected on public sidewalks, a prototypical example of a traditional public forum”) (citing *Schenck v. Pro-Choice Network of Western N. Y.*, 519 U. S. 357, 377 (1997)).